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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/160,133 09/25/98 LELEU

HM22/0629

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SUITE 1213
DES MOINES IA 50309-4076

EXAMINER	
J	6-1032-021
ART UNIT	PAPER NUMBER

DATE MAILED: WHITE, E

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1623

06/29/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/160,133

Applicant(s)
LELEU et al.

Examiner
Everett White

Group Art Unit
1623



☒ Responsive to communication(s) filed on Dec 6, 1999

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire three month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 33-64 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 33-64 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☒ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☒ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

1. Amendment B filed March 21, 2000 has been received and entered into the record.
2. Claims 33-64 are pending in the case.
3. All 35 U.S.C. statutes not cited in this Office action can be found cited in full in a previous Office action.

35 U.S.C. 103(a) Rejection

4. Claims 33-40 and 62-64 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Caboche (US Patent No. 5,651,829) for the reasons already of record on pages 2 and 3 of the Office Action filed September 1, 1999.
5. Applicant's arguments filed December 6, 1999 have been fully considered but they are not persuasive. Applicants argue that the Caboche patent does not describe the maltitol crystals having the form set forth in the instant claims. However, this argument is not persuasive since the maltitol content and maltotriitol content determines the form of the maltitol crystals. Since the Caboche patent meets the maltitol and maltotriitol content that is set forth in the instant claims, the form of the instantly claimed maltitol crystals would be embraced by the Caboche patent. Applicants also argue that the figures disclosed in the Caboche patent which indicate sizes of 67 μm and 125 μm are smaller than the crystals of the instant invention. This argument is not persuasive since these sizes are clearly within size ranges of 50 μm to 500 μm that are set forth in the instant claims. Applicants further argue that the process disclosed in example 1 of the Caboche patent is different from the process of the instant invention because the Caboche patent discloses a process step that involves atomizing a syrup relative rich in maltitol on a moving pulverulent bed of particles of crystallized maltitol of a purity at least equal to that of the maltitol syrup. This argument is not persuasive since the broad language used to describe the instantly claimed process does not exclude such a process step. Accordingly, the rejection of Claims 33-40 under 35 U.S.C. 103(a) as being unpatentable over the Caboche patent is maintained.

6. Claims 41-43 and 62-64 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Kataura et al (European Patent No. 741140) in view of Caboche (US Patent No. 5,651,829) for the reasons already of record on pages 3-5 of the Office Action filed September 1, 1999.

7. Applicant's arguments filed December 6, 1999 have been fully considered but they are not persuasive. Applicant's argument against the rejection is based on the grounds that the Kataura et al reference does not discuss the importance of the maltitol and maltotriitol contents of the maltitol syrup being crystallized with respect to the form of the obtained crystals. However, this argument is not persuasive since the Kataura et al reference discloses a maltitol content that meets the claimed limitations and suggests a maltotriitol content that would meet the structural form of the maltitol crystals. Also, the process steps disclosed in the instant claims are embraced by the Kataura et al reference. As discussed in the above rejection, the Caboche patent meets the claimed limitations. Accordingly, the rejection of claims 41-43 as being unpatentable over the Kataura et al and Caboche references under 35 U.S.C. 103 is maintained.

8. Claims 44-64 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Devos et al (US Patent No. 4,846,139) for the reasons already of record on pages 6 and 7 of the Office action filed March 15, 1999.

9. Applicant's arguments filed December 6, 1999 have been fully considered but they are not persuasive. Applicants argue that the maltitol composition of the Devos et al patent comprises at least 1.5% of other impurities in addition to maltotriitol that may lead to other non-determinable crystalline forms. However, this argument is not persuasive since the Devos et al patent sets forth a maltitol and maltotriitol content that meets the criteria for forming the crystalline forms that are recited in the instant claims.

Applicants further argue against the rejection on the grounds that nothing in the Devos et al patent disclosed or suggests to the person skilled in the art that a crystalline maltitol composition comprising essentially a specific crystalline form (bipyramidal or prismatic) of maltitol crystals is obtained in a reproducible manner using a specific starting material comprising a specific amount of a specific impurity. This argument is not persuasive because the Devos et al

patent meet the instantly claimed limitations by disclosing the material that have the specific features such as the maltitol content and the maltotriitol content set forth in the claims.

Applicants argument that a composition containing 94% of maltitol and 4% of maltotriitol, as set forth in instant Claim 50, does not contain sorbitol is not persuasive because the composition comprises 2% of material that have not been labeled which could include sorbitol..

In view of the above arguments, the rejection of the claims under 35 U.S.C. 103 is maintained.

10. All the claims are rejected.

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to E. White whose telephone number is (703) 308-4621. The examiner can normally be reached on Monday-Friday from 8:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Geist, can be reached on (703) 308-1701. The fax phone number for this Group is (703) 308-4556.

Application/Control Number: 09/160,133
Art Unit: 1623

Page 5

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1235.

E. White
White

June 21, 2000



GARY GEIST
SUPERVISORY PATENT EXAMINER
TECH CENTER 1600